

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

The Michelin Retirement Plan and the
Investment Committee of the Michelin
Retirement Plan,

and

Chicago Transit Authority Retiree Health
Care Trust,

Plaintiffs,

v.

Dilworth Paxson, LLP, et al.,

Defendants.

Case No.: 6:16-cv-03604-DCC-JDA

PLAINTIFFS' STATUS REPORT

Plaintiffs The Michelin Retirement Plan and the Investment Committee of the Michelin Retirement Plan ("Michelin"), and Chicago Transit Authority Retiree Health Care Trust ("RHCT") (together, "Plaintiffs") submit this Status Report pursuant to the Court's Order dated June 22, 2018 directing the parties to submit a status report regarding the continued need for a stay (ECF No. 286). There have been significant changes since Plaintiffs' last status report dated May 21, 2018 (ECF No. 273). Plaintiffs would respectfully submit that the current stay should be lifted and the case should go forward. Plaintiffs provide the following updates as to the status as relates to the stay:

I. United States v. Jason Galanis, et al., 16 Cr. 0371 (R.A.) (S.D.N.Y.) ("Criminal Action")

The criminal trial in the Southern District of New York against Defendants Archer, Cooney and John Galanis ended on June 28, 2018 with guilty verdicts against Archer, Cooney and John Galanis. Prior to trial, specifically during the week of May 14, 2018, Defendants

Dunkerley, Hirst and Morton entered guilty pleas. Defendant Jason Galanis previously pled guilty on January 29, 2017 and was sentenced to fourteen years on August 11, 2017. All Defendants have now either pled guilty to or have been convicted of the criminal charges against them.

On July 20, 2018, Morton filed a Motion to Withdraw her guilty plea entered on May 16, 2018. All briefing on the motion has been ordered to be filed on or before August 3, 2018 as to not affect Morton's November 30, 2018 sentencing.

The sentencing schedule for the Defendants is as follows:

Sentencing

09.07.2018	Gary Hirst
11.02.2018	John Galanis
11.09.2018	Devon Archer
11.09.2018	Bevan Cooney
11.30.2018	Michelle Morton
03.08.2019	Hugh Dunkerley

It should be noted that of the Defendants to be sentenced, only Archer, Cooney and Morton have entered an appearance in the South Carolina action.

As this Court will recall, this case has remained stayed predominantly at the request of Defendant Morton due to concerns about her ability to defend herself in the criminal action and her Fifth Amendment privilege. (ECF Nos. 218, 255, 266.) Plaintiffs submit that Morton's guilty plea waives, and therefore eliminates, many of those concerns. *See, e.g., United States v. Cazarez-Castillo*, No. CRIM.A. 6:04-112-HMH, 2007 WL 486531, at *4 (D.S.C. Feb. 12, 2007). To the extent Morton has any remaining concerns about her Fifth Amendment privilege, she can assert the privilege as an objection during discovery in this action. At that time, the parties—and if necessary the Court—can address those objections on a case-by-case basis in the context of the discovery sought. Therefore, Plaintiffs request that the stay of this action be lifted.

Plaintiffs would further submit that there are sufficient procedural issues and discovery between the parties not involved in the criminal proceeding that the court could, at a minimum, lift the stay to allow the matter to go forward at to the remaining defendants.

**II. Securities and Exchange Commission v. Atlantic Asset Management, LLC,
15-cv-09764 (WHP) (S.D.N.Y.) (“AAM”)**

On July 11, 2017, Hartford Fire Insurance Company (“Hartford”) filed a Motion for Leave to File a Declaratory Judgment action (AAM, ECF No. 224). Hartford sought declaration that the policy and bond are void and no coverage is afforded under either the policy or the bond for claims sought by the Receiver on behalf of the investors (including Michelin).

On August 3, 2017, a hearing was held before Judge William Pauley in the Southern District of New York to discuss the Hartford Motion. (AAM, ECF No. 228). As a result of the hearing, Judge Pauley issued a Scheduling Order requiring Hartford to file by September 8, 2017, either their Motion for Leave to File a Declaratory Judgment Action against AAM only or a declaratory judgment action naming the Receiver and each of the insured plans (including Michelin) as Defendants. On August 21, 2017, the court issued a Final Judgment as to Defendant Atlantic Asset Management, LLC in Case No. 15-cv-9764. (AAM, ECF No. 247).

On September 8, 2017, in the Southern District of New York, Hartford filed its Complaint for Declaratory Judgment naming the Receiver and each of the insured plans (including Michelin and RHCT) as Defendants in a separate declaratory action. Hartford Fire Insurance Company v. Marti P. Murray, et al., 17 Cv. 6855 (S.D.N.Y.). (Hartford, ECF No. 1). This action has proceeded and is currently before the court on motions for summary judgment which were heard and are under advisement.

III. Bevan Cooney Bankruptcy

On January 19, 2018, Defendant Bevan Cooney entered into a Consent Judgment and Order Determining Debt Non-Dischargeable with Michelin; wherein, Defendant Cooney consented to entry of a money judgment against him in the South Carolina Civil Action (C.A. No.: 6:16-cv-03604-DCC-JDA), for the benefit of Michelin, in the amount of restitution ordered payable to Michelin, or Michelin's pro rata share of the total restitution ordered, in the pending Criminal Action (Item I above). Michelin agreed to stay the South Carolina Civil Action against Defendant Cooney until the conclusion of his Criminal Action. IN RE: Bevan T. Cooney, Debtor, United States Bankruptcy Court, Western District of Michigan, Case No.: 17-03016-jwb; ECF No.: 15. As noted above, the Criminal Action ended on June 28, 2018 with a guilty verdict against Defendant Cooney. The sentencing of Defendant Cooney is scheduled for November 9, 2018 at which time restitution will be ordered. Soon thereafter, as agreed, Michelin will file a judgment against Cooney for the amount of restitution ordered in the Criminal Action.

On March 8, 2018, the United States Bankruptcy Court for the Western District of Michigan entered an order holding a motion for default RHCT in its adversary action against Defendant Cooney in abeyance pending the outcome of the criminal trial. IN RE: Bevan T. Cooney, Debtor, United States Bankruptcy Court, Western District of Michigan, Adversary Proceeding #: 17-80161-jwb; ECF No.: 11. On July 30, 2018, the Bankruptcy Court entered an order continuing to hold RHCT's motion for default in abeyance until December 13, 2018, after Cooney's sentencing. For now, the bankruptcy stay continues to remain in place as to Cooney. RHCT submits that this action can remain stayed as to Cooney without requiring a stay as to the remaining civil defendants.

CONCLUSION

For the reasons set forth above and with there being no remaining criminal actions pending against the Defendants, the Plaintiffs request that the stay be lifted and the matter be allowed to proceed.

Respectfully submitted,

August 2, 2018

s/ J. Derrick Quattlebaum

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